I. INTRODUCTION

On May 15, 2001, the Department issued a Notice of Inquiry soliciting comments

on whether the Department should promulgate rules or amend existing regulations concerning the Cost of Gas Adjustment Clause ("CGAC"), 220 C.M.R. § 6.00 et seq. See Order Opening Investigation, D.T.E. 01-49 (2001). In accordance with the Department's existing regulations, each local distribution company ("LDC") is required to file semi-annually, a calculation of the Gas Adjustment Factor ("GAF") for the purpose of recovering costs associated with the purchase of the gas commodity and with the storage and interstate transportation of the gas commodity to the LDC. See 220 C.M.R. § 6.01. Further, pursuant to the Department's regulations, each LDC is required to file annually a reconciliation accounting of its gas supply costs, comparing the actual costs incurred to procure seasonal gas supplies with the forecasted costs of those gas supplies. See 220 C.M.R. § 6.08. After a review of the accounting contained in an LDC's filing, the Department either permits a company to recover under-collected costs from customers, or directs a company to credit over-collected costs to customers (both with interest). Id.

The regulations also allow LDCs to file an amended GAF at any time, provided that the filing is made at least ten days before the first billing cycle of the month in which it is proposed to take effect. See 220 C.M.R. §6.12(2). The regulations also permit the Department, at any time, to require an LDC to file an amended GAF. See 220 C.M.R.

§ 6.12(3).

Stability in gas commodity prices throughout the 1980s and 1990s meant that both

over- and under-recoveries tended to be small and manageable each year -- until winter 2000/2001. As a result of supply constraints and the abnormally cold weather in the 2000/2001 winter season, and the resulting dramatic and sudden increase in the gas commodity prices, the Department took the unusual action of allowing LDCs to collect incrementally for the projected under-recovery of gas costs during the winter season, as opposed to deferring collection of the likely under-recovery of the gas costs until the end of the winter season. See Cost of Gas Adjustment Clause, D.T.E. 01-09 et seq. (2001).

In recognition of the increases in gas costs experienced by customers during the 2000-2001 winter season, the Department announced that it would investigate whether to promulgate rules and/or amend the existing regulations to allow LDCs to file for recovery of projected under- or over-collection of gas costs more frequently than currently required in response to extraordinary price fluctuations. Cost of Gas Adjustment Clause, D.T.E. 01-09 et seq., at 11. In response to the Department's NOI, comments were submitted by the Attorney General, the Division of Energy Resources ("DOER"), Bay State Gas Company ("Bay State"), Berkshire Gas Company ("Berkshire"), Fall River Gas Company and North Attleboro Gas Company (collectively, "Southern Union"), KeySpan Energy Delivery New England ("KeySpan"), NSTAR Gas Company ("NSTAR") and AllEnergy Marketing Company ("AllEnergy").

II. COMMENTS

Bay State, Berkshire, KeySpan, NSTAR and Southern Union (collectively, "LDCs") agree that the Department need not promulgate rules or amend existing regulations to require LDCs to submit CGAC filings more frequently than semi-annually (Bay State Comments at 2; Berkshire Comments at 2; Fall River Comments at 2; KeySpan Comments at 3; North Attleboro Comments at 2; NSTAR Comments at 3). Instead, the LDCs recommend that the Department establish guidelines for the submission of a mandatory amended GAF filing whenever an LDC determines that its original forecast of over- or under-recovery of gas costs at the end of the peak period would exceed five percent (Bay State Comments at 3; Berkshire Comments at 2;

Fall River Comments at 2; KeySpan Comments at 3; North Attleboro Comments at 2; NSTAR Comments at 3-4).

Under the existing regulations, LDCs would have the option of filing an amended GAFat any time, but that filing must be submitted at least 10 days prior to the first billingcycle of the month. See 220 C.M.R. § 6.12(2).

Close As proposed individually by most of the LDCs, the amended GAF would be filed no later than five days prior to the first billing cycle of the following month and would include an update of actual costs, an updated forecast of gas prices based on the posting on the New York Mercantile Exchange ("NYMEX"), and a revised GAF calculation designed to produce a zero balance of deferred gas costs for the respective base and supplemental components of the GAF (Bay State Comments at 2; Fall River Comments at 2; KeySpan Comments at 3-4; North Attleboro Comments at 2; NSTAR Comments at 4). The amended GAF would take effect on the first day of the month for which it is proposed, unless otherwise ordered by the Department (Fall River Comments at 2; KeySpan Comments at 4; North Attleboro Comments at 2; NSTAR Comments at 2).

As part of their proposals, each LDC requests that the Department grant a limited exception to 220 C.M.R. §6.12(2) so that amended filings could be made five days – rather than ten days – prior to the first day of the month of an LDC's billing cycle (Bay State Comments at 4; Berkshire Comments at 2; Fall River Comments at 2; KeySpan Comments at 4; North Attleboro Comments at 2; NSTAR Comments at 4). The LDCs contend that by allowing amended filings to be made closer to the date of the new billing cycle, LDCs could use the most recent NYMEX data available prior to the actual NYMEX closing price for the month, which is listed three business days prior to the end of the month (Fall River Comments at 2; KeySpan Comments at 3-4; North Attleboro Comments at 2; NSTAR Comments at 4). The Attorney General states that, historically, LDCs have successfully filed amended CGACs based on an anticipated level of under- or over-collection (Attorney General Reply Comments at 2). The Attorney General opines that the current CGAC regulations need not be changed to permit such filings and that, while amending seasonal CGACs for significant

under- or over- recoveries may appear to benefit both customers and the LDCs, there are additional costs associated with interim CGAC filings (e.g., preparation of the filings, billing system changes, additional customer service inquiries, etc.) that companies would seek to recover from customers (id.). Thus, rather than require LDCs to submit interim GAFs, the Attorney General requests that the Department continue its current policy of approving amendments to CGAC filings on case-by-case basis (id.). Nonetheless, the Attorney General states that should the Department require LDCs to submit amended GAF filings, such filings should be made after an established threshold has been met (id.). Specifically, the Attorney General recommends that the Department establish and incorporate in its regulations a standard filing requirement for CGAC amendments setting forth the data requirements and timeline for filing an amended CGA. According to the Attorney General, such a filing should include details of the expense or revenues primarily responsible for the under- or over- collection, the actual period costs incurred to date, the actual revenues, estimates of under- or over-recovery at the end of the CGA period whether the Department rejects or approves the amendment, bill impact analyses for each customer class, and a copy of the notice sent to customers informing them of the requested change (id.). Moreover, the Attorney General recommends that the Department require that an amended GAF filing be made ten days prior to the start of the effective date of GAF, as opposed to the LDCs' suggestion of five days (id. at 2-3).

Alternatively, AllEnergy advocates that the Department implement a monthly CGAC filing (Comments of AllEnergy at 1). AllEnergy states that a monthly CGAC would give more appropriate price signals to customers (id.). Specifically, AllEnergy contends that, while LDCs should maintain the seasonality of demand charges as prescribed in the existing regulations, LDCs should use forecast costs each month to calculate the amount of commodity cost to be recovered (id.).

AllEnergy notes that because LDC prices serve as the “cost to compare” for customers who are shopping in the competitive marketplace, monthly prices would create fewer distortions in the LDC’s price (id.). AllEnergy states that out-of-date data regarding commodity costs, as well as price distortions created by the return of large annual reconciliation balances, cause situations where suppliers are effectively shut out of the market for a period of time because of the lag between the time that the market prices go up and the time that the LDC’s prices reflect market price changes (id.). AllEnergy states that the Department’s current regulations permit the Department to require monthly GAF filings

(id. at 2).

DOER recommends that the Department promulgate rules that require LDCs to submit CGAC filings whenever an LDC’s natural gas costs are expected to exceed or fall below ten percent of the total seasonal gas costs stated in an LDC’s effective GAF (DOER Comments

at 1). Contrary to the positions of the other commenters, DOER opines that new regulations must be promulgated to allow for the filing of an adjusted GAF (id. at 6). DOER states that the existing regulations were designed to ensure that cost recovery did not challenge rate continuity and that rate structure changes would be effectuated in a predictable, gradual manner (id.). DOER states that while 220 C.M.R. § 6.12(2) provides for the filing of an amended GAF at any time, there is no analogous provision for an adjustment to the GAF (id. emphasis added). While DOER acknowledges that nothing in the regulations precludes filing an adjustment to the GAF more frequently than semi-annually, DOER argues that such an interpretation would be open to question (id. at 6-7).

In addition to addressing issues concerning the CGAC filings, DOER also requests that the Department use this inquiry to investigate whether LDCs should be permitted to implement price risk management (“PRM”) tools during the upcoming heating season (id. at 8). DOER states that the Department should permit LDCs to use PRM to protect customers from large, unexpected changes in wholesale prices (id. at 11-16).

In response to DOER’s proposal to investigate PRM in the instant docket, both the Attorney General and Bay State caution the Department that such an investigation is inappropriate (Attorney General Reply Comments at 3; Bay State Reply Comments at 1). The Attorney General requests that the Department defer any investigation into the implementation of PRM until it has determined whether LDCs will be obligated to provide commodity beyond 2005 (Attorney General Reply Comments at 3). Bay State requests the Department to investigate PRM in company-specific proposals rather than in the instant, generic docket (Bay State Reply Comments at 1). Bay State contends that the company-specific approach would provide them with the opportunity to design and propose PRM programs that fit their unique supply portfolio and load requirements (id.).

Given the complexity of the issues involved in an investigation into a company’sproposal to use PRM tools for gas commodity procurement, the Department did notconsider the use of PRM in this proceeding.

Close

## III. ANALYSIS AND FINDINGS

Costs incurred by the LDCs for the purchase, storage, and interstate transportation of gas (referred to as gas supply costs) are currently recovered via the CGAC on a

dollar-for-dollar basis. See 220 C.M.R. § 6.00. That is, LDCs do not profit on the gas commodity component of a gas bill, and the cost of gas is a straight pass-through (Cost of Gas Adjustment Clause, D.T.E. 01-09 et seq., at 4 (2001). Gas

supply costs are fully reconciled. Id. Each September 15th, every LDC files a reconciliation accounting of its prior year's costs, stating the actual costs incurred to procure gas and comparing those costs to the amount charged to customers under the previous gas year's GAF. Id.

A gas company has a statutory obligation to serve its customers in an efficient and cost-effective manner. See G.L. c. 164, §69I. Where it does so, a gas company is entitled to an opportunity to recover its legitimately-incurred gas costs. 220 C.M.R. § 6.00 et seq. The Department is concerned about the effect that unusual changes in commodity costs can have on ratepayers. To help mitigate the impact on ratepayer's bills as a result of significant changes in gas costs, the Department agrees with the LDCs, the AG and DOER that companies should be required to file an updated CGA when gas costs exceed or fall below a threshold level. The Department notes that DOER's proposed threshold of ten percent may lead to significant under recovery without an adjustment to the GAF. Conversely, the five percent threshold proposed by the LDCs and accepted by the Attorney General would alert the Department and customers alike to impending unusual increases. Thus, the Department finds that a five percent threshold would ensure rate continuity, minimize customer confusion, and avoid the accrual of excess gas deferrals.

The Department directs that, in addition to filing for recovery of CGA semi-annually, as is a matter of routine for the LDC, companies shall now be required to file for recovery of a GAF whenever a gas company determines that its projected deferred gas-cost balance at the end of the peak period will be less than or greater than five percent of the total seasonal gas costs stated in that LDC's effective GAF. When submitting an amended GAF, LDCs shall be required to include details of the expense or revenues primarily responsible for the

under- or- over-collection, the actual period costs incurred to date, the actual revenues, estimates of under- or over-recovery at the end of the CGA period whether the Department rejects or approves the amendment, bill impact analyses for each customer class, and a copy of the notice sent to customers informing them of the requested change.

The Department has considered AllEnergy's recommendation that LDCs be required to file GAFs on a monthly basis. The Department notes that stability in gas commodity prices throughout the 1980s and 1990s meant that both over- and under-recoveries tended to be small and manageable each year. Cost of Gas Adjustment Clause, D.T.E. 01-09 et seq., at 5 (2001). It was not until the winter of 2000-2001 that LDCs incurred the drastic changes in the price of gas. Id. In light of the historic pattern of gas costs and in consideration of the administrative costs to prepare and to effectively investigate each company's accounting to ensure that the reconciliation leads to the recovery of only the gas supply costs actually incurred, we find that monthly CGAC filings are not warranted at this time.

The Department must also consider the timing within which LDCs must submit their CGAC filings. The LDCs propose to file a GAF five days prior to its effective date. This, the companies argue, would ensure that their filings for recovery of gas costs would reference the latest available data of actual gas costs and the NYMEX futures prices indicative of costs for natural gas service. Alternatively, the Attorney General requests that the Department maintain the requirement that GAF filings be submitted ten days prior to the effective date. To make an informed decision on whether to allow recovery of GAFs, the LDCs must provide the Department with the most recent pricing and forecast information available. As the NYMEX closing price for the month is published three business days prior to the end of the month, the Department acknowledges that GAF filings must be submitted as close to the end of the month as is practicable. The Department notes that, based on its own experience, an investigation of seven business days is necessary to allow for an effective review of a company's filing. Therefore, for amended GAF filings submitted pursuant to this Order, the Department grants a limited exception to its regulations and allows for the submission of amended filings to be submitted seven business days prior to the first billing cycle of the following month. The Department notes that the authority to grant such a limited exception to our regulations is currently

authorized pursuant to 220 C.M.R. §6.12(1).

Finally, the Department must determine whether allowing amended CGA filings is permitted under the existing regulations, or whether new regulations must be promulgated. The Attorney General, the LDCs, and AllEnergy agree that the Department has the authority to require amended CGA filings under the existing regulations. See 220 C.M.R. § 6.12(2).

While DOER acknowledges that 220 C.M.R. § 6.12(2) provides for filing an amended GAF at any time, because there is no analogous provision for adjustment to the GAF, DOER contends that new regulations must be promulgated to allow for an adjustment to the GAF more frequently than semi-annually. The Department believes that DOER's distinction between an amended or adjusted GAF filing is merely semantics. Because LDCs are permitted to submit amended GAFs pursuant to 220 C.M.R. § 6.12(2), the Department finds that the promulgation of new regulations is not necessary before implementation of the directives contained in this Order.

## IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That LDCs submit for Department review and approval amended GAFs whenever an LDC determines that its projected deferred gas-cost balance at the end of the peak period will be less than or greater than five percent of the total seasonal gas costs contained in the effective GAF; and it is

FURTHER ORDERED: That, pursuant to 220 C.M.R. §6.12(2), LDCs shall be granted an exception to our regulations for the limited purpose of filing an amended GAF seven business days prior to the first billing cycle of the month that the GAF is to take effect; and it is

FURTHER ORDERED: That, any amended GAFs submitted in accordance with the directives herein be submitted no later than seven business days prior to the first billing cycle of the month in which they are to take effect.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner